

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 6944

Petition of Motion Telecom, Inc.,)
for Approval of a Transfer of Control)

Order entered: 4/29/2004

I. INTRODUCTION

This case involves a petition ("Petition") filed on March 16, 2004, by Motion Telecom, Inc. ("Motion" or the "Petitioner"), seeking Vermont Public Service Board ("Board") approval, under 30 V.S.A. § 107, of an indirect transfer of control resulting from the sale of stock of its parent corporation.

On April 13, 2004, the Vermont Department of Public Service ("Department") submitted a letter to the Board indicating that the Department had no objection to approval of the transfer of control. Further, the Department stated no objection to the issuance of an order without hearing or further investigation, as provided under 30 V.S.A. § 107.

The Board has reviewed the Petition and the accompanying documents and agrees that approval should be granted without hearing.

II. FINDINGS OF FACT

Based upon the Petition and accompanying documents, we hereby make the following findings of fact.

1. Motion was issued a Certificate of Public Good (CPG No. 752) to provide intrastate telecommunications services on September 25, 2003. Motion is a wholly-owned subsidiary of Advantage Advisory Service, Inc., d/b/a Advantage Wireless ("Advantage"). Petition at 1; Exh. B.

2. Advantage has entered into a Stock Purchase Agreement with Wireless Channels, Inc., ("Wireless") that will result in Wireless acquiring 75.72% of the outstanding shares of Advantage. Wireless and Advantage are not currently certificated as telecommunications carriers in Vermont. Petition at 1-2; Exh. C.

3. Motion will continue to operate under its current name and tariff. Accordingly, the

transfer will not cause any inconvenience for Vermont consumers. Petition at 2-3.

4. The proposed transaction will promote the public interest in that it will improve or maintain the financial condition of Motion, thereby enhancing its ability to compete in the telecommunications market and ensuring the continued existence of telecommunications competition in Vermont. Petition at 3.

III. DISCUSSION

The proposed transaction requires approval by the Board under 30 V.S.A. § 107. This statute conditions approval of a proposed transfer of control upon findings that the transfer of control will promote the public good (30 V.S.A. § 107). This standard is met in this case.

Under 30 V.S.A. § 107(a), "[n]o company shall directly or indirectly acquire a controlling interest in any company subject to the jurisdiction of the [Board] . . . without the approval of the [Board]." "Controlling interest" is defined as "ten percent or more of the outstanding voting securities of a company" or such other interest as the Board determines "to constitute the means to direct or cause the direction of the management or policies of a company." 30 V.S.A. § 107(c)(1).¹ In order to approve the acquisition of such a controlling interest, the Board must first find that it will "promote the public good." 30 V.S.A. § 107(b).

After reviewing the petition, we conclude that 30 V.S.A. § 107 applies because the transaction contemplated will result in Wireless acquiring 75.72% of Advantage, the parent corporation of Motion, resulting in the indirect transfer of controlling interest of Motion to Wireless. We further conclude that the transfer of control will not affect the services that Motion currently provides to customers in Vermont. Motion will continue to operate under its current name and tariff. The proposed transaction will also allow Motion to operate more effectively in Vermont, which will, in turn, result in competition among providers of telecommunications services in Vermont. The resulting transfer of control, therefore, will promote the public good. For all of these reasons, we conclude that the proposed transaction meets the standards set forth in 30 V.S.A. § 107 and should be approved.

1. The statute also provides that "[t]he presumption that ten percent or more of the outstanding voting securities of a company constitutes a controlling interest may be rebutted by a company under procedures established by the board by rule." 30 V.S.A. § 107(c)(1).

IV. CONCLUSIONS

The transfer of control of Motion should be approved because the transaction will promote the public good of the State of Vermont and will not result in obstructing or preventing competition. 30 V.S.A. § 107(b).

V. ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that:

1. The transfer of control of Motion Telecom, Inc., will promote the public good and, therefore, is approved.

DATED at Montpelier, Vermont, this 29th day of April, 2004.

s/Michael H. Dworkin)	PUBLIC SERVICE
)	
s/David C. Coen)	BOARD
)	
s/John D. Burke)	OF VERMONT

OFFICE OF THE CLERK

Filed: April 29, 2004

Attest: s/Susan M. Hudson
Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: Clerk@psb.state.vt.us).

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.